

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
GTE CORPORATION,	)	
Transferor,	)	
	)	
and	)	CC Docket 98-184
	)	
BELL ATLANTIC CORPORATION,	)	
Transferee,	)	EB File No. EB-04-IH-0143
	)	
For Consent to Transfer of Control of Domestic	)	
and International Sections 214 and 310	)	
Authorizations and Application to Transfer	)	
Control of a Submarine Cable Landing License	)	
	)	

**ORDER**

**Adopted: January 5, 2005**

**Released: January 7, 2005**

By the Commission:

**I. INTRODUCTION**

1. In this Order, we deny Verizon Communications, Inc.'s ("Verizon's") request that we discontinue the independent auditor condition in Merger Condition XXII of the *Bell Atlantic/GTE Merger Order* for all periods beginning on or after January 1, 2005.<sup>1</sup>

**II. BACKGROUND**

2. In the *Bell Atlantic/GTE Merger Order*, the Commission adopted the Merger Conditions to mitigate any potential public interest harms of the merger of Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE") to form Verizon.<sup>2</sup> These Merger Conditions, to which Verizon agreed, included Condition XXII, the independent auditor condition.<sup>3</sup> This condition requires Verizon to engage

<sup>1</sup> *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14190-92, ¶¶ 336-38, 341 (2000) ("*Bell Atlantic/GTE Merger Order*" or "*Merger Order*"), *vacated in part sub nom., Ass'n of Communications Entrs. v. FCC*, 235 F.3d 662 (D.C. Cir. 2001); *id.*, 15 FCC Rcd at 14327-28, Appendix D, ¶ 56; *see* Letter from Jeffrey W. Ward, Senior Vice President, Regulatory Compliance, Verizon, to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated April 28, 2004 ("*Verizon Request*").

<sup>2</sup> *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14036, 14190, ¶¶ 4, 336; *id.*, 15 FCC Rcd at 14258-331, Appendix D. We refer to the market-opening conditions in Appendix D as the Merger Conditions.

<sup>3</sup> *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14190-93, ¶¶ 336-42.

an independent auditor to conduct audits on an annual basis regarding Verizon's compliance with the Merger Conditions and the sufficiency of Verizon's internal controls.<sup>4</sup> The *Merger Order* specifically contemplates that the independent auditor condition will permit oversight of Verizon's compliance with all merger conditions. For instance, Commission staff approves the independent auditor and reviews the scope and quality of the independent auditor's work, the independent auditor's final audit report must be publicly filed with the Commission, and the Commission staff has access to the independent auditor's working papers and supporting materials for two years following the submission of the final audit report.<sup>5</sup> As Verizon agreed when the Commission released the *Merger Order*, the independent auditor condition expires when the last of the remaining Merger Conditions subject to this requirement sunsets.<sup>6</sup>

3. On April 28, 2004, Verizon requested that the Commission discontinue the independent auditor condition for all periods beginning on or after January 1, 2005.<sup>7</sup> Verizon filed a supplemental letter on June 22, 2004 providing additional information.<sup>8</sup> On July 13, 2004, the Enforcement Bureau issued a public notice seeking comment on Verizon's request.<sup>9</sup> AT&T Corporation filed comments, the Pennsylvania Public Utility Commission and Bridgecom International, Inc. filed reply comments, and various other competitive local exchange carriers ("LECs") filed joint reply comments.<sup>10</sup> These commenters universally oppose Verizon's request. Verizon also filed reply comments on August 10, 2004.<sup>11</sup>

### III. DISCUSSION

4. In evaluating Verizon's request, we consider whether discontinuing the independent auditor condition would serve the public interest.<sup>12</sup> The purpose of imposing the independent auditor

---

<sup>4</sup> *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14327-28, Appendix D, ¶ 56 (requiring an annual examination engagement).

<sup>5</sup> *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14327-28, Appendix D, ¶ 56; *Delegation of Additional Authority to the Enforcement Bureau*, Order, 17 FCC Rcd 4795 (2002).

<sup>6</sup> *See Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14327-28, Appendix D, ¶ 56.

<sup>7</sup> *See Verizon Request*.

<sup>8</sup> *See* Letter from Sara Cole, Associate Director, Federal Regulatory Advocacy, Verizon, to William H. Davenport, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated June 22, 2004.

<sup>9</sup> *See* Public Notice, "Enforcement Bureau Seeks Comment on Verizon's Request to Discontinue Audit of Verizon's Compliance with Merger Conditions," DA 04-2093 (rel. July 13, 2004).

<sup>10</sup> *See* Comments of AT&T Corporation, filed on July 27, 2004 ("AT&T Comments"); Reply Comments of the Pennsylvania Public Utilities Commission, filed on August 10, 2004 ("PA PUC Reply"); Reply Comments of BridgeCom International, Inc., filed on August 10, 2004; Reply Comments of ACN Communications Services, Inc., Adelphia Business Solutions Operations, Inc. d/b/a TelCove, ATX Communications, Inc., Capital Telecommunications, Inc., CTC Communications Corp., CTSL, LLC, DSLnet Communications, LLC, El Paso Networks, LLC, Focal Communications Corp., Gillette Global Network, Inc., d/b/a Eureka Networks, ICG Telecom Group, Inc., Integra Telecom, Inc., Lightship Telecom, LLC, LightWave Communications, LLC, McLeodUSA Telecommunications Services, Inc., Mpower Communications Corp., NTELOS Network Inc., PAETEC Communications, Inc., Pac-West Telecomm, Inc., RCN Telecom Services, Inc., TDS Metrocom, LLC, and Vycera Communications, Inc., filed August 10, 2004 ("Joint Reply").

<sup>11</sup> *See* Reply Comments of Verizon, filed August 10, 2004 ("Verizon Reply").

<sup>12</sup> *See* 47 U.S.C. § 416(b); *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14194, ¶ 345 & n.807 (providing that the Commission may modify the Merger Conditions); *see also, e.g., Application of GTE Corporation, Transferor,*

(continued....)

requirement was to provide a cost-effective yet “thorough and systematic evaluation of Verizon’s compliance with the conditions and the sufficiency of Verizon’s internal controls” to supplement the Commission’s usual investigative authority in ensuring compliance and enforcement of the Merger Conditions.<sup>13</sup> As discussed below, we find no reason to revisit our decision to impose the independent auditor condition as originally contemplated by the *Merger Order*.

5. In support of its request, Verizon makes the general argument that there is no reason for the Commission or Verizon to continue these audits for the period under consideration. In particular, Verizon contends that we should discontinue the independent auditor condition because “most of the conditions have sunset as of January 1, 2005” and “there is no reason to believe that additional audits will disclose any failure by Verizon to satisfy these merger conditions while they remain in effect,” in light of the content of prior audit reports.<sup>14</sup> We disagree with Verizon’s argument and find no reason to depart from the Commission’s previous determinations that the audit condition is in the public interest. The results of previous independent audit reports are not dispositive of our decision here.<sup>15</sup> The Commission found that “[o]nly a strong corporate compliance program, in conjunction with the independent audit and other enforcement mechanisms, will enable consumers to realize the full benefits of the conditions.”<sup>16</sup> Thus, the Commission recognized from the outset the importance of the independent auditor condition not only as an integral component of a successful program to monitor Verizon’s compliance with the operative conditions but also as a disincentive to engage in discrimination and other potential misbehavior.<sup>17</sup>

6. Verizon also claims that, in the absence of audits, other compliance and enforcement mechanisms established in the *Merger Order* would provide adequate assurance of its compliance with the Merger Conditions. Verizon contends that most of the remaining operative conditions are “effectively self-policing.”<sup>18</sup> Specifically, Verizon states that most of the remaining operative conditions require

(...continued from previous page)

and Bell Atlantic Corporation, *Transferee, For Consent to Transfer Control of Domestic and International Section 214 and 310 Authorization and Application to Transfer Control of a Submarine Cable Landing License*, Order, 17 FCC Rcd 6982, 6984, ¶ 7 & n.14 (2002) (finding that a temporary suspension of the Bell Atlantic/GTE Merger Conditions would serve the public interest); *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission’s Rules*, Second Memorandum Opinion and Order, 15 FCC Rcd 17521, 17532, ¶ 21 (2000) (finding that grant of SBC’s request to modify its Merger Condition is in the public interest).

<sup>13</sup> *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14190, ¶ 336.

<sup>14</sup> *Verizon Request* at 2.

<sup>15</sup> We note that there is a dispute in the record as to the implications of certain disclosures by Verizon in connection with previous independent audit reports. See AT&T Comments at 14 (arguing that the past two audits found violations with Conditions XI and XII relating to unbundled loop and resale discounts); but see Verizon Reply at 3 (noting that these were not findings in the report but statements in its management assertions attached to the audit report that identified errors, which the independent auditor did not consider to be material violations); see also, e.g., Deloitte and Touche, Independent Account Report (on Conditions IV, VI, VII, IX-XII, XVII, XVIII, XXI-XXV) (March 17, 2004), Report of Management on Compliance with Merger Conditions, p. 6-7; Deloitte and Touche, Independent Accountant Report (May 1, 2003), Report of Management on Compliance with Merger Conditions, p. 8.

<sup>16</sup> *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14189, ¶ 335; AT&T Comments at 12; Joint Reply at 19.

<sup>17</sup> See *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14188-93, ¶¶ 332-342.

<sup>18</sup> *Verizon Request* at 2.

specific discounts or pricing terms for competitive LECs who could be expected to bring to the Commission's attention any failure by Verizon to continue complying with those requirements.<sup>19</sup> The Merger Conditions, however, placed the burden on Verizon, and not the competitive carriers, to take active steps to ensure compliance, including hiring an independent auditor to conduct audits.<sup>20</sup> Several commenters observed that relying on the complaint process without an independent evaluation is unnecessarily burdensome to the harmed party.<sup>21</sup> They also argue that the Commission is less likely to discover violations through complaints than through the audit process because a harmed party may not have the incentive or resources to file a complaint.<sup>22</sup> We agree with these commenters. We see no reason to second-guess our earlier decision that, as a condition for approval of Bell Atlantic's and GTE's merger, Verizon should bear the burden of complying with the independent auditor condition for the entire period envisioned in the Commission's original order.

7. Verizon also contends that another operative condition, the nondiscriminatory rollout of digital subscriber line ("xDSL") services condition, is self-policing because Verizon continues to file quarterly reports on its compliance with the xDSL deployment.<sup>23</sup> In addition, Verizon contends that it will continue to file annual compliance reports "prepared in a format substantially similar to the independent auditor's section of the audit report that will allow the Commission and others to confirm Verizon's compliance" with the Merger Conditions.<sup>24</sup> We reject Verizon's claim that these compliance requirements obviate the need for the independent auditor condition. As previously stated, the Commission found that the compliance program protected the public interest, but only in conjunction with the independent auditor condition.<sup>25</sup> A quarterly report or compliance report is not a substitute for an independent audit. Verizon's obligations to file unaudited quarterly and compliance reports do not provide an independent review of Verizon's performance. During the audit process, the Commission staff, state commissions, and independent auditor have access to the working papers, supporting materials, and interpretations underlying Verizon's compliance assertions that may not be disclosed in the performance reports or available to third parties.<sup>26</sup> Finally, when contemplating the merger, the Commission considered the independent auditor condition a useful tool to supplement its usual investigative authority.<sup>27</sup> In view of the foregoing, we find no reason to alter our prior conclusion that the compliance mechanisms discussed in Verizon's request are not substitutes for the independent auditor

<sup>19</sup> *Verizon Request* at 2; *Verizon Reply* at 5 (arguing that, in addition to filing a formal complaint, the harmed party may also file informal complaints or requests for accelerated docket treatment, or they could simply file a letter with the Enforcement Bureau asking for an investigation).

<sup>20</sup> *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14187, ¶ 332 (stating that the Merger Conditions place responsibility of taking active steps to ensure compliance on Verizon by: (1) establishing a compliance program; (2) requiring an independent compliance audit; and (3) setting voluntary payment obligations). The voluntary payment provisions sunset in 2004.

<sup>21</sup> See AT&T Comments at 14-15; Joint Reply at 20-22.

<sup>22</sup> See AT&T Comments at 14-15 (stating that the difference between the small discount amount available compared to the high cost of pursuing a complaint and the time expended in such complaints serves as a deterrent to filing a formal complaint); Joint Reply at 22.

<sup>23</sup> See *Verizon Request* at 2; *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14292-93, Appendix D, ¶ 15.

<sup>24</sup> See *Verizon Request* at 2; *Verizon Reply* at 3-5; *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14188-89, ¶¶ 333-35 (Appendix D, 15 FCC Rcd at 14326, ¶ 55) (Condition XXI).¶

<sup>25</sup> *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14188, ¶ 332.

<sup>26</sup> See AT&T Comments at 12-3; Joint Reply at 20; PA PUC Reply at 1-2, 4-5.

<sup>27</sup> *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14190, ¶ 336.

condition.

8. Lastly, Verizon contends that we should discontinue the audit requirement because “the audits for the years 2005 and beyond would cost at least one million dollars,” and “the burdens of continued audits clearly outweigh any possible benefits.”<sup>28</sup> We find this contention unpersuasive. The Commission specifically found that “the audit requirement establishes an efficient and cost-effective mechanism for providing reasonable assurance of Bell Atlantic/GTE’s compliance with the conditions.”<sup>29</sup> Verizon has not provided substantial evidence to contradict this finding. We conclude that, therefore, Verizon has not demonstrated that discontinuing the independent auditor condition would serve the public interest.

#### IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, pursuant to sections 1-4, 201-205, 214, 251, 303(r), 309, and 416(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 251, 303(r), 309, and 416(b) that Verizon Communications, Inc.’s request that the Commission discontinue requiring audits under Condition XXII of the *Bell Atlantic/GTE Merger Order* is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>28</sup> *Verizon Request* at 2; *Verizon Reply* at 7.

<sup>29</sup> *See Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14192, ¶ 341; AT&T Comments at 19; Joint Reply at 20.